

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE ORDER

IN THE MATTER OF: Nazareth Evangelical Lutheran Church of Cedar Falls, Black Hawk County, Iowa Wastewater Facility No. 6-07-09-8-01	ADMINISTRATIVE ORDER NO. 2013-WW-06
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TO: Angie Rath, Registered Agent
Nazareth Evangelical Lutheran
Church of Cedar Falls, Black Hawk
County, Iowa
7401 University Avenue
Cedar Falls, Iowa 50613

Chris Hansen, President
Nazareth Evangelical Lutheran
Church of Cedar Falls, Black Hawk
County, Iowa
241 Sandahl Wood Circle
Cedar Falls, Iowa 50613

I. SUMMARY

This administrative order (order) is issued to the Nazareth Evangelical Lutheran Church of Cedar Falls, Black Hawk County, Iowa (Church). The Iowa Department of Natural Resources (Department) issues this order due to the Church's failure to timely submit wastewater monthly operation reports (MORs) for the wastewater treatment facility (WWTF) operated by the Church. This order requires the timely submittal of MORs with all required information to Department Field Office No. 1 (FO 1) and payment of an administrative penalty of \$3,000.00.

Any questions or response regarding this order should be directed to:

Relating to technical requirements:

Sue Miller, Environmental Specialist
IDNR Field Office No. 1
809 West Main, Suite 4
Manchester, Iowa 52057
Ph: 563/ 927-2640

Relating to legal requirements:

Diana Hansen, Attorney at Law
Legal Services Bureau
Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034
Ph: 515/281-6267

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
Nazareth Evangelical Lutheran Church
of Cedar Falls, Black Hawk County, Iowa**

II. JURISDICTION

This order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1, and the rules promulgated or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. The Church is located at 7401 University Avenue, Cedar Falls, Iowa 50613. The legal description for the Church is Section 24, T89N, R14 W, Black Hawk County, Iowa. The Church building complex has a heating and cooling system that has chillers and heat pumps. The NPDES permit issued to the Church authorizes the discharge of non-contact cooling water used in the heating and cooling systems through five designated outfalls into a storm sewer that discharges into Dry Run Creek.

2. The WWTF owned and operated by the Church is operated pursuant to NPDES Permit No. 6-07-09-8-01. This permit expired on February 25, 2012. Following issuance of an administrative order to the Church, a permit application was submitted to the Department. The application was not complete. A new permit has not been issued due to the facilities manager, who was listed as the Church's contact person on the permit application form, not responding to the permit writer's requests for additional information. The permit writer has not received monitoring data for the Church since October 2011. The permit writer needs to verify that the Church is in compliance with the expired permit before issuing a new permit.

3. The NPDES permit requires that MORs be sent on a monthly basis by the 15th day following the close of the reporting period. The Church has failed to submit MORs for the past 15 months. The last MOR was received by FO 1 on November 21, 2011 for the month of October 2011.

4. FO 1 issued a notice of violation (NOV) letter to the Church on November 28, 2012. The NOV required the Church to submit the past due MORs within 10 days. The past due MORs have not been received by FO 1 to date. Since issuing the NOV letter, FO 1 has not received MORs for the months of December 2012 and January 2013.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.175(1) provides in part:

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
Nazareth Evangelical Lutheran Church
of Cedar Falls, Black Hawk County, Iowa**

If there is substantial evidence that any person has violated or is violating any provision of this division or chapter 459, subchapter III, or of any rule established or permit issued pursuant thereto; then:

1. The director may issue an order directing the person to desist in the practice which constitutes the violation or to take such corrective action as may be necessary to ensure that the violation will cease.

2. Iowa Code section 455B.173 authorizes and requires the Environmental Protection Commission (Commission) to promulgate rules relating to the construction and operation of WWTFs and the discharge of pollutants into waters of the state. The Commission has done so at 567 IAC chapters 60- 69. Rule 64.6 specifies the conditions that are to be included in a permit, including applicable effluent limitations in chapters 61 and 62 of the rules and monitoring and reporting requirements in chapter 63.

3. Department rule 567 IAC 63.7 provides for the submission of records of operation for WWTFs to the Department. This rule provides as follows:

567—63.7 (455B) Submission of records of operation. Except as provided in subrules 63.3(4) and 63.5(1), records of operation shall be submitted to the appropriate regional field office of the department within 15 days following the close of the reporting period specified in 63.8(455B) and in accordance with monitoring requirements derived from this chapter and incorporated in the operation permit. The permittee shall report all instances of noncompliance not reported under 63.12(455B) at the time monitoring reports are submitted. If a permittee becomes aware that it failed to submit any relevant facts in any report to the director, the permittee shall promptly submit such facts or information.

Under this rule MORs are required to be submitted to the Department within fifteen days following the close of the reporting period and in accordance with monitoring requirements derived from chapter 63 and included in the operation permit for the facility. Rule 63.9 requires MORs to include the results of all monitoring specified in or authorized by chapter 63. An NOV letter issued as a result of review of monitoring data for the Church detailed violations of the monitoring and reporting requirements for this facility in regards to submittals of MORs to FO 1. These violations have been outlined in this order in Section III. Statement of Facts.

V. ORDER

THEREFORE, the Department orders the Church to comply with the following provisions to cease, abate and redress violations:

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
Nazareth Evangelical Lutheran Church
of Cedar Falls, Black Hawk County, Iowa**

1. You are required to submit all past due MORs to FO 1 within thirty days of receipt of this order.
2. You are required to comply with the monitoring and reporting requirements of the NPDES permit issued for the Church and any future NPDES permits. This includes completion of all monitoring required by the NPDES permit and timely submittal of all MORs to FO 1.
3. An administrative penalty of \$3,000.00 is assessed by this order. You are required to submit payment of this penalty to the Department within sixty (60) days of receipt of this order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with an administrative penalty.

a. **Economic Benefit** Since this order requires the Church to submit all past due MORs, the economic benefit is negligible. No amount is assessed for this factor.

b. **Gravity of the violations** One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above substantial civil and criminal sanctions are authorized by statute. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter.

Maintaining compliance with water pollution control laws is a major program priority of the federal and state pollution control agencies. Failure to timely submit MORs creates an additional burden on the Department. The Department does not know if a discharge has occurred causing a water quality violation or if there has been a permit limit violation. The field office then has to write letters advising the facility of the failure to submit the MORs, resulting in additional use of Department staff time and resources to monitor the facility, to report on the facility, and to address the violations to EPA. Such repeated violations threaten the integrity of the regulatory program. Based on these considerations,

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
Nazareth Evangelical Lutheran Church
of Cedar Falls, Black Hawk County, Iowa**

the Department assesses the amount of \$1,500.00 for this factor, due to multiple violations.

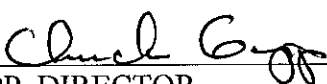
c. **Culpability** This facility operated pursuant to an NPDES permit which requires the submittal of MORs by the 15th day of each month. The degree of negligence is high in view due to this company's failure to submit MORs timely for 15 months. In view of the failure to submit MORs as required by this facility's NPDES permit, the Department assesses \$1,500.00 for this factor, based on multiple violations.

VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.175(1), and 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, a written notice of appeal to the Commission may be filed within 30 days of receipt of this order. The notice of appeal should be filed with the Director of the Department, and must identify the specific portion or portions of this order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC chapter 7.

VIII. NONCOMPLIANCE

Compliance with Section V. constitutes full satisfaction of all requirements pertaining to the specific violations described in this order. Failure to comply with this order may result in referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.



CHUCK GIPP, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 4th day of
March, 2013

Nazareth Evangelical Lutheran Church of Cedar Falls, Black Hawk County, Iowa-
Wastewater Facility No. 6-07-09-8-01 (Copy to Central Office Wastewater File), Sue
Miller- Field Office No. 1, Diana Hansen- Legal Services Bureau, US EPA Region VII,
I.B.2.a.

